

SEP - 9 2005

PHASE OUT AGREEMENT

by and between

CARGILL, INCORPORATED,
a Delaware corporation

UNITED STATES OF AMERICA,
acting by and through the Secretary of the Interior or her authorized representatives, including
UNITED STATES FISH AND WILDLIFE SERVICE,

and

STATE OF CALIFORNIA,
acting by and through its
DEPARTMENT OF FISH AND GAME

PHASE OUT AGREEMENT

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PHASE OUT AGREEMENT

This PHASE OUT AGREEMENT ("Agreement") is made and entered into as of the 10th day of January, 2003 ("Agreement Date") by and between CARGILL, INCORPORATED, a corporation organized and existing under the laws of the State of Delaware ("Cargill"), the UNITED STATES OF AMERICA ("United States") acting by and through the Secretary of the Interior or her authorized representatives, including the UNITED STATES FISH AND WILDLIFE SERVICE ("FWS"), and the STATE OF CALIFORNIA ("State") acting by and through its DEPARTMENT OF FISH AND GAME ("CDFG") (collectively, the "Parties" and individually, a "Party"). **For the purposes of this Agreement, capitalized terms used herein shall have the meaning assigned to them under Section 14 of this Agreement.**

Recitals

- A. Cargill, the United States, and the State desire to enter into an Agreement For The Conveyance Of Lands And Interests In Lands ("Conveyance Agreement"), pursuant to which Cargill is to transfer to the United States and to the State certain real property and real property rights situate and lying in the counties of Napa, San Mateo, Santa Clara and Alameda, State of California, identified in the Conveyance Agreement (the "Property").
- B. The Property is generally shown on the map ("Map") that is attached to this Agreement as Exhibit A and includes areas commonly referred to as the "Alviso Evaporating Ponds," the "Baumberg Evaporating Ponds," the "West Bay Evaporating Ponds," and the "Napa Plant Site". Each of these areas is identified by name and individual Ponds within each area (collectively "Ponds" and individually "Pond") are assigned numbers on the Map. Collectively the Alviso Evaporating Ponds, Baumberg Evaporating Ponds, and West Bay Evaporating Ponds are referred to as the "South Bay Ponds." The West Bay Evaporating Ponds shall also include Pond SF-2 in the event title to that Pond (at which work currently is being done to address the impacts of a former, adjacent skeet shooting range) is transferred to the United States as provided in the Conveyance Agreement. Portions of the Property are adjacent to or in the vicinity of Cargill's "Newark Plant Site" or Cargill's "Redwood City Plant Site," both of which are generally shown on the Map. The Property does not include either the Newark Plant Site or the Redwood City Plant Site.
- C. The Conveyance Agreement provides for the United States to acquire certain portions of the Property, generally including the Alviso Evaporating Ponds and the West Bay Evaporating Ponds, and for the State to acquire other portions, generally including the Baumberg Evaporating Ponds and the Napa Plant Site.

- D. The Property transfer identified in the Conveyance Agreement is conditioned, among other things, on Cargill, the United States, and the State agreeing to the terms and conditions pursuant to which operations and management of the Property will be phased from solar salt-making to that for wildlife habitat values and Cargill will continue to operate and to maintain certain features of the Property subsequent to such Property transfer and during such phase out period.
- E. The Property has historically been used for commercial solar salt production and includes Ponds with liquids at various salinity levels, as well as Ponds that are generally dry, under current operational practices.
- F. The Parties have jointly developed a proposed initial stewardship plan, the objective of which is to maintain existing habitat values and prevent a build up of salt in the Ponds while long-term restoration planning is underway. In developing this initial stewardship plan, the Parties considered a number of factors such as current use of a Pond by wildlife, the Pond's current physical characteristics, condition, and location within the overall network of Ponds, and the potential for future restoration.
- G. The goal of the Parties is to ensure a smooth transition from management of the Property for solar salt-making to management of the Property primarily for its existing wildlife habitat values. The Conditions Of Transfer for each Pond, which are defined in this Agreement, are designed to facilitate FWS' and CDFG's ability to implement the initial stewardship plan. While ownership of the Property will transfer at the Close of Escrow, Cargill will retain responsibility for Operation and Maintenance of the Property in furtherance of the purposes of the United States and the State in acquiring the Property until the conditions in this Agreement are met. During the time that Cargill is performing O&M, Cargill will endeavor to continue to manage each Pond to maximize Pond habitat values consistent with its obligation of meeting the Conditions Of Transfer for each Pond.
- H. The initial stewardship plan envisions reopening the Ponds to San Francisco Bay to allow water to circulate in and out of the Ponds as a way to maintain Pond habitat values and prevent a build up of salt in the Ponds while long-term restoration planning is underway. To do so will require permits from the RWQCB and other permitting agencies. If permitted, initial stewardship would include discharging surface water from some of the Ponds to San Francisco Bay. The potential for such discharge is reflected in some of the terms and conditions set forth in this Agreement, including for example the Transfer Standard.

Agreement

Based on the foregoing Recitals and in consideration of the mutual promises and covenants contained herein and in the Conveyance Agreement and intending to be legally bound, Cargill, the United States, and the State agree as follows:

1. Conditions Of Transfer. Cargill agrees to complete each and every of the services and activities set out in this Section at and for each of the Ponds, except as expressly provided otherwise herein (collectively "Conditions Of Transfer;" meeting each Condition Of Transfer for any Pond(s) shall be individually and collectively referred to as "Cargill Completion").
 - a. Transfer Standard. Cargill shall meet the Transfer Standard in each South Bay Pond. The Transfer Standard is "established" through the issuance by the RWQCB of permit(s) for discharge of surface waters from these Pond(s), and Cargill Completion may not occur prior to the date on which such permit(s) are issued.
 - i. The Transfer Standard means either:
 - (1) for those Ponds that are to be left at Cargill Completion in the physical condition specified in Exhibit B ("Physical Condition") as Wet, that the liquid in each such Pond meets the applicable discharge requirements of the RWQCB for initial discharge of surface waters from that Pond ("Wet Transfer Condition"); or
 - (2) for those Ponds that are to be left at Cargill Completion in the Physical Condition specified in Exhibit B as Dry, that the Pond is Dry and Cargill has used reasonable efforts to remove substantially all of the liquid from the surface and from borrow ditches, including the use of portable pumps where necessary ("Dry Transfer Condition").
 - (a) In the event waters are introduced into a Dry Transfer Condition Pond by FWS or CDFG, as applicable, and after initial circulation in the Pond those waters do not meet the Wet Transfer Condition, Cargill shall transfer the estimated liquid volume of that Pond to Cargill's Newark Plant Site provided that (I) only Bay Waters and precipitation have been introduced into the Pond for the purpose of discharging to the surrounding Bay and sloughs (the

"Introduced Waters"); (II) the Introduced Waters, prior to introduction into the Pond, meet the Wet Transfer Condition; (III) Cargill is given notice prior to the introduction of Introduced Waters into the Pond and notice no later than three (3) days after the Introduced Waters have reached operating level in the Pond and Cargill (if it requests) is given access to observe these activities; (IV) a determination is made within two (2) days after the Introduced Waters are circulated in the Pond that the waters in the Pond do not meet the Wet Transfer Condition, and Cargill is notified within twenty-four (24) hours of that determination; (V) FWS or CDFG, as applicable, has installed appropriate water management facilities as identified in the initial stewardship plan for the Property; (VI) FWS or CDFG, as applicable, agrees to allow Cargill to move such brines across the Property in a normal operating manner; (VII) FWS or CDFG, as applicable, has not altered management structures such that Cargill will be unable to move such brines; and (VIII) no more than one (1) year has elapsed after the Closure Report for the Pond has been submitted to FWS or CDFG, as applicable.

- ii. The parties anticipate that the Transfer Standard will be established no later than March 15, 2004. In the event the Transfer Standard is not established on or before that date, FWS or CDFG, as applicable, shall assume O&M responsibility for the Low Salinity Ponds. However, Cargill shall continue to be responsible to meet the Transfer Standard for the Low Salinity Ponds, provided:
- (1) an application has been submitted by January 30, 2003 for all RWQCB permits required to establish the Transfer Standard, and FWS and CDFG diligently pursue the application and issuance of such permits provided Cargill also diligently pursues the same; and
 - (2) FWS and CDFG, as applicable, agree to have Cargill perform O&M for the Low Salinity Ponds and reimburse Cargill for all such actual O&M costs incurred after March 15, 2004. If additional activities, such as increased pumping, are required to meet the Transfer Standard, Cargill shall bear such costs.

In the event that FWS does not satisfy the above conditions and the Transfer Standard has not yet been established, then after March 15, 2004

Cargill shall be deemed to have met the Transfer Standard for all Low Salinity Ponds on the United States Property. In the event that the State does not satisfy the above conditions and the Transfer Standard has not yet been established, then after March 15, 2004 Cargill shall be deemed to have met the Transfer Standard for all Low Salinity Ponds on the State Property.

Notwithstanding anything to the contrary herein, in the event the Transfer Standard is not established by October 1, 2004, Cargill shall have the option to cease the intake of Bay Waters into any of the Low Salinity Ponds and such action by Cargill shall not be considered a breach or failure to perform by Cargill of any of its obligations under this Agreement. Such action by Cargill shall not affect Cargill's obligation to meet the Transfer Standard.

iii. Notwithstanding the foregoing,

- (1) in consideration of the physical characteristics of and the historical as well as anticipated use by wildlife of the Alviso High Salinity Ponds A-22 and A-23, Cargill is not required to meet the Transfer Standard for Ponds A-22 and A-23 but is required to meet the A-22/23 Standard defined below:
 - (a) Cargill shall introduce into and actively circulate Bay Waters in Ponds A-22 and A-23 and manage them to remove concentrated brines and residual salts from the surface layer, and to the extent reasonably practicable, residual salts from the underlying layers of Ponds A-22 and A-23 ("A-22 /23 Standard;" collectively the activities required to meet the A-22/23 Standard shall be referred to as "A-22/23 Activities"). Cargill and FWS acknowledge that brines may remain in the underlying layers and that capillary action may result in minor amounts of salts on the surface of Ponds A-22 and A-23 after the end of the A-22/23 Term;
 - (b) Cargill shall undertake the A-22/23 Activities promptly after installation of a structure to introduce Bay Waters into Ponds A-22 and A-23 and shall continue the A-22/23 Activities until the later of (I) eight (8) years from the Close of Escrow or (II) in the event Cargill decides to install an alternative structure (as provided below), six (6) years from

installation by Cargill of such alternative structure ("A-22/23 Term");

- (i) FWS intends to install water intake structure(s) in Pond A-22 and/or Pond A-23 for habitat management. Cargill shall make a determination within forty-five (45) days of approval of a final permit for such structure whether to use that structure or to use (at Cargill's sole cost) an alternative structure to introduce Bay Waters into Ponds A-22 and A-23. If Cargill intends to use FWS' structure to assist in removing brines and salts from Ponds A-22 and A-23, Cargill will compensate FWS for use of its structure by installing such structure, provided FWS at its cost provides necessary materials and obtains any necessary permits for FWS' structure. Cargill will be responsible for O&M costs and necessary replacement costs for such water intake structure until the Completion Date is reached.
- (c) commencing with the Close of Escrow and throughout the A-22/23 Term, Cargill shall be responsible for the on-going O&M of Ponds A-22 and A-23 as provided in Section 2 of this Agreement;
- (d) each calendar year during the A-22/23 Term, Cargill and FWS shall (I) meet and discuss the status of the A-22/23 Activities and (II) confer and work in good faith to mutually decide on whether any changes to these activities are appropriate and should be implemented in order to meet the A-22/23 Standard. In the event any such change is agreed to, it shall be implemented promptly by Cargill;
- (e) at the conclusion of the A-22/23 Term, Cargill's obligations to conduct the A-22/23 Activities shall cease; and
- (f) for a period of up to two (2) years after the conclusion of the A-22/23 Term, Cargill shall accept any brines, upon reasonable prior written notice and to the extent practicable, as requested by FWS from Ponds A-22 and A-23 to Cargill's Newark Plant Site; provided, however, nothing

has been added to the brines except precipitation or Bay Waters;

- iv. Notwithstanding the foregoing, Cargill shall meet the Napa Requirements for the Napa Ponds.
- b. Physical Condition of Ponds. On Cargill Completion, Cargill shall leave each of the South Bay Ponds in the Physical Condition (Wet or Dry) specified in Exhibit B for these Ponds. Exhibit B delineates factors considered in setting the Physical Condition for each Pond. The Parties acknowledge that the Ponds may be subject to a variety of naturally occurring conditions and events, such as variations in precipitation patterns and bird nesting, as well as to physical constraints that may make it desirable to reconsider the Physical Conditions of some Ponds.
 - i. If Cargill desires a change in the Condition Of Transfer relating to the Physical Condition of any Pond, Cargill shall provide FWS or CDFG, as applicable, written notice of such request. The affected Parties agree to confer and discuss the request made and to work in good faith to mutually agree upon a resolution of the request. The Parties shall have a period of twenty (20) business days from the date of such notice to agree upon a resolution of the request; provided, however, any change to the Physical Condition of any Pond shall only occur upon the approval of FWS or CDFG, as applicable, such approval not to be unreasonably withheld.
 - ii. If FWS or CDFG, as applicable, desires a change in the Condition Of Transfer relating to the Physical Condition of any Pond, it shall provide Cargill written notice of such request. The affected Parties agree to confer and discuss the request made and to work in good faith to mutually agree upon a resolution of the request. The Parties shall have a period of twenty (20) business days from the date of such notice to agree upon a resolution of the request; provided, however, any change to the Physical Condition of any Pond shall only occur upon the approval of Cargill, such approval not to be unreasonably withheld.
- c. Removal. On or before Cargill Completion for each Pond, Cargill shall have (I) removed any fixtures, equipment, or structures constructed or installed after the Effective Date on or about such Pond by or at Cargill's direction, for the performance of any of the Cargill Activities that FWS or CDFG, as applicable, has designated for removal (after receiving from Cargill reasonable notice and opportunity to so designate) and reasonably repaired or otherwise corrected any material damage created as a result of such construction or installation; and (II) legally closed any wells or soil borings installed after the Effective Date on or

about such Pond by or at Cargill's direction for the performance of the Cargill Activities (collectively the "Phase Out Removal Work"). Cargill shall not leave as a result of the Phase Out Removal Work any levee in a materially breached condition nor with any substantial holes or pits.

- d. Closure Report. Cargill Completion includes and shall be deemed complete for any Pond only after a report ("Closure Report") for the Pond has been prepared and submitted to FWS or to CDFG (as applicable) as follows:
- i. Within forty-five (45) days after the Effective Date, the Parties shall jointly work in good faith to (I) select a foundation such as the National Fish and Wildlife Foundation, the California Wildlife Foundation, or other similar non-profit organization ("Independent Reviewer") that will retain Independent Licensed Professional(s) to prepare Closure Reports for the Ponds ("Closure Report Services"); and (II) agree to a list of at least three (3) Independent Licensed Professionals who may be retained by the Independent Reviewer for this purpose ("List"). This List shall include only Independent Licensed Professionals who will agree to be bound contractually to be on-site within ten (10) business days of receipt of notice to proceed. An "Independent Licensed Professional" is a qualified professional licensed by the State as a Professional Engineer (P.E.), Registered Geologist (R.G.), Certified Engineering Geologist (C.E.G.), or Certified Hydrogeologist (C.H.G.) that is of recognized standing, experienced in the evaluation of work of the type to be done and that is not in the direct employment of Cargill, the United States or State or by any Affiliate of the same. "Affiliate" means any entity that controls, is controlled by, or is under common control with another entity.
 - ii. Promptly after selection, the Parties shall arrange with the Independent Reviewer to provide Closure Report Services in accordance with this Agreement. These arrangements, at a minimum, shall require that the Independent Reviewer agree to timely complete each and every of the activities set out in subsections (iii) and (iv) of this Section of the Agreement (including any expedited processing of information) and provide FWS and CDFG, as applicable, with copies of any notices provided by Cargill to the Independent Reviewer. FWS and CDFG shall bear the costs and expenses of the Independent Reviewer. Cargill shall bear the costs and expenses (not limited to expedited processing costs) of any Independent Licensed Professional retained by the Independent Reviewer.
 - iii. No later than ten (10) business days after notice of Cargill's request for a

Closure Report ("Closure Notice"), the Independent Reviewer shall retain an Independent Licensed Professional from the List to prepare a Closure Report for the Pond(s) identified in the Closure Notice and such Independent Licensed Professional shall be on-site and shall work continuously to conduct all required field work. Further, such Independent Licensed Professional shall have until five (5) business days after its site visit to issue, or deny issuance of, the applicable Closure Report. In the event either (I) the Independent Reviewer or Independent Licensed Professional fails to inform Cargill, within five (5) business days of the Closure Notice, of the date the Independent Licensed Professional will be on-site; (II) the Independent Licensed Professional is not on-site within ten (10) business days of the Closure Notice; or (III) the Closure Report is not issued or denied within five (5) business days of the Independent Licensed Professional's site visit, Cargill shall be entitled to retain an Independent Licensed Professional to prepare any Closure Reports requested in the applicable Closure Notice.

- (1) Low Salinity Ponds. For the Low Salinity Ponds, Cargill may provide the Closure Notice at any time after the Transfer Standard has been established.
- (2) Other Ponds. For Alviso Ponds A-19, A-20, and A-21 and the West Bay Ponds, Cargill shall provide the Independent Reviewer with six (6) months advance notice that a Closure Report may be requested. At that time if the List no longer contains three (3) Independent Licensed Professionals who are able to perform the necessary activities under this Section of the Agreement, the Parties shall jointly work in good faith to agree within sixty (60) days of Cargill's advance notice to a new list of at least three Independent Licensed Professionals who may be retained by the Independent Reviewer for the purposes of this Section of the Agreement ("Updated List"). The Updated List shall include only Independent Licensed Professionals who will agree to be bound contractually to be on-site within ten (10) business days of receipt of notice to proceed.

iv. The Closure Reports for all South Bay Ponds except Ponds A-22 and A-23 shall:

- (1) be based upon the testing protocol outlined in Exhibit C to this Agreement and include the elements identified in the report outline provided in that Exhibit C; and

- (2) include a representation that in such Independent Licensed Professional's opinion the Transfer Standard has been achieved; provided, however, for any Pond meeting the Transfer Standard in a Dry condition such representation shall include an opinion that the Pond meets the Dry Transfer Condition.
- v. Notwithstanding the foregoing, Cargill will provide FWS a written Closure Report demonstrating how it has met the A-22/23 Standard.
- vi. Notwithstanding the foregoing, Cargill will provide CDFG a written Closure Report demonstrating how Cargill has met the Napa Requirements for the Napa Ponds. Such Closure Report shall be more particularly described in the Napa Plan.
- e. Pond-By-Pond Completion. Cargill may meet the Conditions Of Transfer and reach Cargill Completion on a Pond-by-Pond or unit-by-unit basis; provided, however, such Ponds or units are self-contained management groups, as defined in Exhibit D.
2. Operation and Maintenance. Commencing with the Close of Escrow, Cargill shall be responsible for the on-going O&M for each Pond until such time as the Conditions Of Transfer have been met for that Pond consistent with Section 1(e) of this Agreement. In the performance of its O&M, Cargill shall operate each Pond in a manner which maintains current Pond habitat values to the extent such operation does not unreasonably interfere with Cargill's ability to reach the Conditions Of Transfer. In the event FWS or CDFG, as applicable, believe Cargill is not conducting its O&M consistent with its obligations under this subsection, FWS or CDFG may provide Cargill written notice of the same and the affected parties will promptly meet to discuss such concerns. Cargill agrees to take reasonable actions to address such concerns, provided, however, that Cargill shall not be obligated to take any action that unreasonably interferes with Cargill's ability to meet the Conditions Of Transfer.
- a. Definition. The term "Operation and Maintenance" or "O&M" shall include ordinary and customary operation (i.e. water control) and maintenance activities and shall include (I) operation and control of water control structures and other facilities and all associated costs, including the costs of utilities and electricity or other fuel costs for pumping operations and (II) maintenance and, to the extent provided in Section 10(d) of this Agreement, repair of levees, water control structures, siphons, fences and gates and other infrastructure (the standard of maintenance to which Cargill will be held is that standard ordinary and customary to its historic active operations, despite the fact that Cargill's active salt making

operations on the Property shall have ceased).

O&M shall not include costs of permitting, construction, or repair of any of FWS' or CDFG's capital improvements, except as otherwise expressly provided in this Section 2 and Sections 1(a)(iii), 4(e), 5 and 10(d). FWS and CDFG, as applicable, shall be solely responsible for and bear all costs of any intake/discharge water control structures and other facilities construction or other work necessary for discharge of surface waters including any circulation of waters in the Ponds needed for such discharge, except as otherwise expressly provided in Section 1(a)(iii), 4(e), 5, and 10(d).

- b. Installations. Cargill shall give reasonable written notice prior to the location of any new fixtures, equipment, or structures or the material relocation of any existing fixtures, equipment, or structures to be constructed, installed, or used by Cargill on the Property (collectively "Installation"). This prior notice shall be given to FWS or CDFG, as applicable, and Installation shall be subject to the prior approval of the affected Property owner within ten (10) business days of its receipt of such notice, such approval not to be unreasonably withheld. Notwithstanding the foregoing, Cargill shall not be required to provide prior written notice to the extent any Installation reasonably constitutes emergency work, provided, however, Cargill shall promptly provide FWS or CDFG, as applicable, with notice of the same.

- c. Additional O&M Services. FWS and/or CDFG may elect to request that Cargill provide additional services beyond those required under this Agreement that would assist either or both FWS and CDFG in operating and maintaining the Ponds after such time as Cargill's O&M responsibilities under this Agreement terminate ("Additional O&M Services"). Cargill may, but shall not be required (other than with regard to the O&M for Low Salinity Ponds contemplated by Section 1(a)(ii)(2) of this Agreement) to, elect to provide Additional O&M Services. In no event, however, shall Cargill be required to provide nor shall FWS and/or CDFG be obligated to accept any Additional O&M Services unless the Parties to be bound have mutually so agreed in writing and provided further that any such agreement meets all applicable requirements of Federal and State laws and regulations.

3. Performance Standards. In Cargill's performance of its obligations hereunder ("Cargill Activities"), Cargill shall:

- a. comply with all applicable federal, state and local laws, regulations, ordinances, orders and other legal requirements, including but not limited to Environmental Law;

- b. routinely provide the United States and the State with copies of all final letters, reports, or other documents which regard Cargill's Activities and are sent to or received from any government agency asserting jurisdiction over Cargill's Activities;
- c. manage or cause to be managed properly any waste generated by or on behalf of Cargill on the Property in connection with Cargill's Activities, arrange or cause to be arranged for the timely and proper transportation of such waste off-site, and pay or cause to be paid all fees, taxes, and other costs associated with the identification, containment, removal and disposal of such waste, and not identify the United States or the State as the generator of such waste except and then only to the extent that may be required by applicable law;
- d. take all reasonable steps to prevent any release (except as otherwise provided by applicable law or under this Agreement) of any substance or waste regulated under Environmental Laws ("Release") on or at the Property during any activities pursuant to Cargill's access granted herein, handle any Release caused by the acts or omissions of Cargill, its agents, employees, contractors or others under its control ("Cargill's Parties") during any activities pursuant to Cargill's access granted herein in accordance with applicable laws and regulations and promptly report any Release caused by acts or omissions of Cargill or Cargill's Parties to FWS or CDFG, as applicable;
- e. not cause or permit any liens or encumbrances to be filed against the Property or any interest therein due to a debt or other monetary obligation of Cargill as a result of performance of Cargill's Activities ("Cargill Liens"). If any such Cargill Liens are filed, the United States and the State may (after providing Cargill written notice of such Cargill Lien and a reasonable time to cure the same), without waiving any rights or remedies for such breach and without releasing Cargill from any of its obligations, cause such Cargill Liens to be released by such means as they shall deem proper including, without limitation, payment. Cargill shall pay to the United States or the State, as applicable, on demand any sum paid to remove Cargill Liens; and
- f. Subsequent to the Close of Escrow, all revenue obtained by Cargill from the removal of salt from the Property pursuant to this Agreement ("Salt Removal Revenue") shall be the property of the United States and the State to the extent the Salt Removal Revenue exceeds the amount of all expenses incurred by Cargill in the performance of its obligations under this Agreement ("Expenses"). The amount of Salt Removal Revenue and Expenses shall be reasonably determined by Cargill and communicated to FWS and CDFG with reasonable supporting

documentation. Neither this Section nor any other Section of this Agreement shall give the FWS or CDFG a right of access to the financial records of Cargill.

4. Completion Dates. Cargill shall use commercially reasonable efforts to reach Cargill Completion in accordance with the following:
- a. for all of the Low Salinity Ponds (as defined in Section 14 of this Agreement and located generally in the areas of the Map identified as the Baumberg Evaporating Ponds and various of the Alviso Evaporating Ponds) within two (2) years of the date on which the Transfer Standard is established;
 - b. for the Alviso High Salinity Ponds A-19, A-20, and A-21 (as defined in Section 14 of this Agreement and located generally in certain areas of the Map identified as the Alviso Evaporating Ponds) within three (3) years of the date on which the Transfer Standard is established;
 - c. for the Alviso High Salinity Ponds A-22 and A-23 (as defined in Section 14 of this Agreement and located generally in certain areas of the Map identified as the Alviso Evaporating Ponds) within the later of (I) eight (8) years of Close of Escrow or (II) in the event Cargill decides to install an alternative structure as provided in Section 1(a)(iii)(b) of this Agreement, six (6) years from such installation;
 - d. for all of the West Bay Ponds except Pond SF-2 (as defined in Section 14 of this Agreement and located generally in the areas of the Map identified as the West Bay Evaporating Ponds), within six (6) years of the date on which the Transfer Standard is established;
 - e. for Pond SF-2 (as defined in Section 14 of this Agreement and located generally in the areas of the Map identified as Pond SF-2) within six (6) years of the later of the date on which (I) title to that Pond is transferred to the United States as provided in the Conveyance Agreement or (II) a structure necessary to introduce Bay Waters into Pond SF-2 either is installed or a determination made (as provided below) to use an alternative approach to introduce the Bay Waters.
 - i. FWS intends to install the water intake structure in Pond SF-2 for habitat management. Cargill shall make a determination within forty-five (45) days of approval of a final permit for such structure whether to use that structure or to use (at Cargill's sole cost) an alternative approach to introduce Bay Waters into Pond SF-2. If Cargill intends to use FWS' structure to assist in removing brines and salts from Pond SF-2, Cargill will compensate FWS for use of its structure by installing such structure,

provided FWS at its cost provides necessary materials and obtains any necessary permits for the FWS structure. Cargill will be responsible for O&M costs and necessary replacement costs, for FWS' structure until the Completion Date is reached;

- f. for the Napa Ponds within eight (8) years of the date CDFG approves the Napa Plan. Provided, however, if the Napa Plan provides for discharge under the Napa Marsh Restoration Plan, then Cargill shall meet the Conditions Of Transfer within five (5) years of the date CDFG authorizes Cargill to discharge liquids under applicable permits to implement the Napa Marsh Restoration Plan. Despite the later completion dates set forth in this Section 4(f), Cargill shall give priority to and reasonably expedite meeting the Conditions Of Transfer for Napa Ponds 9 and 10.

Notwithstanding anything to the contrary herein, the time periods specified above (collectively the "Completion Dates") may be extended upon the mutual agreement of the Parties, which agreement may not be unreasonably withheld; provided, however, any agreement to so extend may be made contingent upon adjusting the financial assurance of performance required under Section 9 of this Agreement to reflect any agreed upon change in Completion Dates. In the event FWS or CDFG, as applicable, objects to a request for extension of a Completion Date, the affected Parties agree to confer and discuss the requested extension and to work in good faith to mutually agree upon a resolution. Except as expressly provided otherwise in this Agreement, in the event the Parties agree to an extension of time for a Completion Date, Cargill shall continue to bear all costs of O&M for the affected Pond(s) during the period of the extension.

5. Napa Plant Site (located generally in the areas of the Map identified as the Napa Plant Site and defined in Section 14 of this Agreement).
 - a. Work Plan. Cargill in consultation with CDFG will prepare a work plan ("Napa Plan") for Cargill to remove, dispose, or otherwise address the salts, brines, and salt-harvesting byproducts present in crystallizer beds 1 through 9, Ponds 9, 10, B-1, B-2, B-3 and Unit 3, and the wash ponds (collectively the "Napa Ponds") at the Napa Plant Site ("Napa Pond Work"). The goal of the Napa Plan shall be to remove, dispose or otherwise address salts, brines and salt-harvesting byproducts in the Napa Ponds to achieve CDFG's restoration and management goals for the Napa Plant Site ("Napa Objective"). The Napa Plan shall be subject to the reasonable approval of CDFG and shall be "completed" only upon such approval. Cargill shall provide a proposed Napa Plan to CDFG no later than January 31, 2003. The Napa Plan shall be completed on or before the date ten (10) days before the date of Close of Escrow.

The Napa Plan may provide for Cargill to achieve the Napa Objective by one or

more of the following methods: (i) the harvesting of crystallized salts and salt residues; (ii) diluting and discharging brines directly to the Napa River; (iii) discharging brines as part of the Napa Marsh Restoration Project; (iv) onsite disposal and encapsulation of crystallized salts in a location, manner and quantity consistent with CDFG's long-term restoration and management of the Napa Plant Site for wildlife; or (v) other removal methods, if any, as may be acceptable to CDFG in its reasonable discretion and set forth in the Napa Plan.

If the Napa Plan provides for diluting and discharging brines directly to the Napa River, the Napa Plan shall identify and provide for Cargill at its expense to perform the necessary work for the establishment by RWQCB of standards for such discharge. If the Napa Plan provides for discharging brines as part of the Napa Marsh Restoration Project, the Napa Plan shall identify and provide for Cargill at its expense to obtain all necessary permits for, and to construct, operate, maintain, repair and replace, all of the capital improvements and infrastructure necessary for such discharge. CDFG and Cargill acknowledge and agree that the Napa Plan must be flexible because of the variety of methods available to achieve the Napa Objective.

The Napa Plan shall be consistent with this Agreement and shall include, without limitation:

- (1) a detailed description of each anticipated method to be employed to remove, dispose of or otherwise address salts, brines and salt-harvesting byproducts at the Napa Plant Site and a statement of the preference afforded to each such method;
 - (2) a schedule for the implementation of each method including, without limitation, time lines for considering alternative methods set forth in the Napa Plan in the event preferred methods prove inadequate or unfeasible; and
 - (3) the requirements for the Closure Report to be provided pursuant to Section 1(d)(vi) of this Agreement.
- b. Napa Requirements. Cargill shall complete the Napa Requirements for each of the Napa Ponds. During the period Cargill is completing the Napa Requirements, CDFG will pursue the development of a restoration plan and goals for the site (the "Napa Restoration Plan") and will apply for any permits necessary to implement the Napa Restoration Plan. The "Napa Requirements" means:
- (1) Cargill will remove the salts and salt-harvesting by-products to the

maximum extent reasonably practicable by harvest or other agreed upon methods and during this time Cargill will provide O&M for the Napa Ponds. Cargill estimates that it can remove ninety-seven percent (97%) of the salts present in the Napa Ponds and commits to removing at least that percentage. Cargill's rough estimate of the tonnage of salts present in the Napa Ponds as of the Agreement Date is attached as Exhibit E. CDFG acknowledges that (I) the soil bottoms of the Napa Ponds contain salt and gypsum is present in Ponds 9, 10, B1, B2, B3 and Unit 3; and (II) Cargill has informed CDFG that removal of salt from the Napa Ponds is subject to reasonable and practicable limitations.

- (2) After the removal in Sub-Section 5(b)(1) is completed, CDFG and Cargill will meet and confer to determine whether any additional work is needed to address residual salt to achieve the Napa Restoration Plan.
- (3) If CDFG reasonably determines that additional work is needed, Cargill will, at its sole cost, set up a management system on the Napa Plant Site to address residual salts in the Napa Ponds. Such a system may include additional on-site rinsing of the Napa Ponds, sequestering or encapsulating residual salts at an on-site location designated by CDFG, establishing a mixing basin on the site to facilitate discharge and/or a system for transferring brines to Pond 7 of the Napa Marsh Restoration Project. Cargill will continue to provide O&M for the Napa Ponds, including O&M for the management system, for a one-year period after the completion of the removal in Sub-Section 5(b)(1).
- (4) At the end of the one-year period in Sub-Section 5(b)(3), CDFG and Cargill will meet and confer to determine whether any additional work is needed to address residual salts to achieve the Napa Restoration Plan. If CDFG reasonably determines that additional work is needed, Cargill will continue to provide O&M for the Napa Ponds, including O&M for the management system, for an additional one-year period. At the end of this additional one-year period Cargill shall have met the Napa Requirements so long as Cargill has complied with its obligations under this Section 5(b).

- c. Activities. Cargill shall perform and complete the Napa Pond Work in accordance with the approved Napa Plan and the applicable provisions of this Agreement. Further, Cargill shall meet the applicable Conditions Of Transfer of the Napa Ponds.
- d. Permits. In addition to its obligations under Section 7 (Permits) of this

Agreement, Cargill shall be responsible for applying for (or managing the application process for, if applicable law requires CDFG to be the applicant) and obtaining, at Cargill's sole cost and expense, all permits and authorizations necessary to carry out the Napa Plan, including without limitation any dilution and discharge of brines directly to the Napa River, any discharge to the Napa Marsh Restoration Project, or any maintenance dredging or disposal of dredge material, as provided for in Section 5(e). Notwithstanding the foregoing, if and to the extent allowed under applicable laws and regulations and any applicable permits then held by CDFG and so long as CDFG incurs no liability or out-of-pocket cost in connection therewith, Cargill may reasonably operate under any applicable CDFG permits in effect during Cargill's performance of the Napa Pond Work.

- e. Dredging. Cargill believes it is likely that, in order to implement a Napa Plan, Cargill will need to perform maintenance dredging, including dredging of the Napa barge canal (as shown on the Napa Site Diagram that is attached to this Agreement as Exhibit F). CDFG agrees to allow Cargill to dispose of dredge materials of a quality and quantity acceptable to CDFG in its reasonable discretion in a manner consistent with CDFG's long-term restoration and management of the Napa Plant Site for wildlife. Dredge materials, if any, shall be disposed only in the following areas: the Napa wash ponds north of the Napa barge canal, the area north of the brine channel, and the area south of Green Island Road, as is consistent with historic practice, or to other area(s), if any, mutually agreeable to Cargill and CDFG. Cargill shall bear all costs of dredging and disposal of dredge materials in accordance with this Agreement and the Napa Plan. CDFG agrees to reasonably cooperate with Cargill to allow Cargill to dispose of such dredge materials, provided CDFG shall not be obligated to incur any out-of-pocket cost in connection with such cooperation or disposal.

6. Reporting Requirements.

- a. Salinity. Cargill routinely monitors Pond salinity. Commencing with the Close of Escrow, every month Cargill shall provide on a Pond-by-Pond basis to FWS or CDFG, as applicable, measurements of the salinity of each Pond taken the prior month to the extent consistent with Cargill's ordinary and customary management of such Ponds.
- b. Schedules. Promptly, but in no event later than thirty (30) days, after the establishment of the Transfer Standard, to the extent applicable Cargill shall provide FWS or CDFG, as applicable, with an estimated schedule for meeting the Conditions Of Transfer. Promptly upon learning of any material changes to the estimated schedule for meeting the Conditions Of Transfer for the South Bay

Ponds or the Napa Ponds, Cargill shall provide an updated schedule to FWS or CDFG, as applicable. If Cargill will not reach an applicable Completion Date, the updated schedule shall be accompanied by a request for extension pursuant to Section 4 of this Agreement.

At least thirty (30) days prior to Closure Notice, Cargill will provide notice to FWS or CDFG, as applicable, of the Physical Condition intended at Cargill Completion for those Ponds listed in Exhibit B as both Wet and Dry. Section 1(b) of this Agreement could be applied to these Ponds at or before the time of this Notice.

- c. Requests For Information. Cargill agrees to use its reasonable efforts to comply promptly with any reasonable and articulated request for information related to Cargill's performance hereunder.
- d. Meetings. The Parties agree to meet informally each calendar quarter, or as otherwise mutually agreed, to discuss the operation and management of the Ponds.

7. Permits.

- a. Cooperation. The Parties acknowledge that the activities contemplated by this Agreement will require the Parties to obtain permits, individually or jointly, from various regulatory agencies. The Parties shall cooperate with each other and work together in good faith to obtain such permits and to provide each other information in each Party's respective control that is reasonably necessary to obtain such permits.
- b. RWQCB Permits. The Parties shall cooperate with the RWQCB and with each other to work together in good faith to apply for any RWQCB discharge permits required to perform the obligations hereunder and (except as otherwise provided herein) to share in the costs of preparing and processing such permit applications as set forth in Exhibit G to this Agreement.
 - i. Such cooperation shall include, to the extent allowed by law, actively pursuing permit application(s) and/or amendments to permit application(s) that would (if granted by the RWQCB) allow any required permits for discharges of surface waters issued on or after the Close of Escrow to identify the United States and/or the State, as applicable, as owner(s) of the Ponds and sole holder(s) of such permits.
 - ii. The Parties shall provide each other all information within their control

that is necessary or helpful in making such permit application(s) to the RWQCB.

- c. Infrastructure Permits. FWS and CDFG shall be responsible for and bear all costs of applying for any permits that may be needed for any intake/discharge water control structures and other facilities construction or other work necessary for discharge of surface waters including any circulation of waters in the Ponds needed for such discharge, except as otherwise expressly provided in Section 5.
 - d. Maintenance Permits.
 - i. Cargill represents and warrants that to the best of its actual knowledge as of the Agreement Date (I) Schedule 1 to this Agreement, subject to the modifications contemplated by Section 7(d)(ii), lists all permits and authorizations necessary for Cargill to conduct or perform all of Cargill's O&M as of the Close Of Escrow under this Agreement (the "Existing O&M Permits"); (II) all Existing O&M Permits are in full force or effect; (III) Cargill has received no written notice of any violations or alleged violations with respect to any of the Existing O&M Permits that has not been cured; and (IV) Cargill has received no written notice that any proceeding is pending or threatened to revoke or limit any of the Existing O&M Permits.
 - ii. Promptly after Close Of Escrow, Cargill, FWS, and CDFG shall request that the Existing O&M Permits be segmented or otherwise modified to reflect the transfer of the Property. Cargill agrees, at its sole cost and expense, either (I) to retain the permits or authorizations set forth in Schedule 1 to the extent the same are required to be held by Cargill to perform its O&M responsibilities under this Agreement or (II) if necessary obtain any permits or authorizations required to be held by Cargill for such O&M responsibilities. FWS or CDFG, as applicable and at its sole cost and expense, agrees to acquire and retain the necessary permits or authorizations required of it as owner of the Property to the extent the same are required for Cargill to perform its O&M obligations as set forth in this Agreement.
 - iii. The Parties shall fully cooperate with each other to apply for any permits or authorizations necessary for any Party to perform its respective obligations under this Agreement.
8. Transfer of Bittern From Redwood City Plant. Cargill covenants to the best of its actual knowledge after due and diligent inquiry, that no bittern is located on the Property as of

the Effective Date of this Agreement. Cargill intends to move bittern from its Redwood City Plant Site by pumping through a pipeline from its Redwood City Plant Site to and through its pipeline located on levees adjacent to the West Bay Ponds, then to and through its Trans Bay Pipeline, and then to and through its pipelines on the east side of San Francisco Bay and on to Cargill's Newark Plant Site ("Redwood City Bittern"). Cargill shall not move any of the Redwood City Bitterns to the Property or to any lands that are part of the Refuge other than to Ponds 12 and 13 -- those areas on the Refuge to which Cargill has certain reserved salt-making and other rights and where bittern currently is stored, as provided in the 1979 Operating Agreement. Ponds 12 and 13 are not being conveyed pursuant to the Conveyance Agreement.

9. Financial Assurance of Performance. Cargill shall provide financial assurance that Cargill shall complete or cause to be completed in accordance with this Agreement any of Cargill's obligations under Section 1, 2, 4 and 5 of this Agreement ("Secured Work"), as follows:
- a. On or before the Close of Escrow, Cargill shall (I) establish and maintain financial security in favor of FWS or its designee assuring that the amount set forth in Exhibit H applicable to the United States Property shall be available to FWS or its designee in the event Cargill breaches or defaults in completing any obligations under Sections 1, 2 or 4 of this Agreement on any of the United States Property and (II) establish and maintain financial security in favor of CDFG or its designee assuring that the amount set forth in Exhibit H applicable to State Property shall be available to CDFG or its designee in the event Cargill breaches or defaults in completing any obligations under Sections 1, 2, 4 or 5 of this Agreement on any of the State Property. Exhibit H segments costs by United States Property and State Property and further reflects the individual costs representing the Low Salinity Ponds, the Alviso High Salinity Ponds, the West Bay Ponds, and the Napa Ponds. Cargill may provide such financial security in one or more of the following forms:
 - i. a surety bond guaranteeing performance of the applicable Secured Work;
 - ii. one or more irrevocable standby letters of credit;
 - iii. one or more certificates of deposit; or
 - iv. a financial mechanism other than as specified in Sub-Sections (i) - (iii) of this Section 9(b) ("alternate security"), provided that prior to its use the alternate security has been submitted to and approved by FWS or CDFG, as applicable. The alternate security shall be at least equivalent to the financial mechanisms specified in subsections (i) - (iii) of this Section. In

evaluating the equivalency of a mechanism FWS or CDFG may consider the certainty and timeliness of the availability of funds for performance of the Secured Work as well as any other factors FWS or CDFG deems to be appropriate. FWS and CDFG may require Cargill to submit additional information reasonably necessary to make the determination of equivalency.

provided, however, that the financial security shall be in a form and substance that is adequate and is acceptable to FWS or CDFG, as applicable, in its reasonable discretion. Without limiting the preceding clause, CDFG, in its sole discretion, may reject financial security in the form of a surety bond.

Cargill shall (I) submit the surety bond (if that is the form of financial security provided) or similar alternate security to FWS or CDFG, as applicable; or (II) deposit the letter of credit, certificate of deposit or similar alternate security into an escrow account with the Title Company and, concurrently with such deposit, irrevocably authorize and direct the Title Company ("Irrevocable Instructions"), to disburse the proceeds of such financial security in accordance with the provisions of this Section 9 without the need for any further instructions. The Irrevocable Instructions shall be subject to the reasonable approval of FWS or CDFG, as applicable.

- b. In the event that FWS or CDFG reasonably determines that there is a material chance that such Party, its designee or the Title Company, whichever holds the financial security, will not be able to access the financial security in the event that FWS or CDFG is permitted to draw upon such security in accordance with the terms of this Section 9, then within thirty (30) days of receipt of written notice of such a determination Cargill shall obtain and present to FWS or CDFG (whichever makes such determination) for approval one of the other forms of financial security listed in this Section. Cargill's provision of or inability to provide adequate financial security shall not excuse performance of any of Cargill's obligations with respect to the Secured Work.
- c. Cargill shall assure that the amount of financial security provided to FWS and CDFG, respectively, under this Agreement shall be at all times at least the amount set forth in Exhibit H pertaining to all segments or units of unperformed Secured Work. Provided, however, upon completion of each segment or unit of Secured Work or upon a showing that the cost to complete the remaining Secured Work has dropped below the applicable amount set forth in Exhibit H, Cargill may reduce the amount of the financial security to one hundred ten percent (110%) of the estimated cost (as adjusted annually for inflation) of the remaining segments or units of the Secured Work to be completed. Any such estimate shall be based

on the cost of performing the Secured Work without any assistance from Cargill. Such reduction shall occur, if at all, no more frequently than twice in any twelve (12) month period for each FWS and CDFG, and is subject to the reasonable approval of FWS or CDFG, as applicable, and FWS or CDFG, as applicable, agree to provide or withhold such approval within twenty (20) business days of receipt of a request for the same.

- d. In the event FWS or CDFG reasonably believes that Cargill is in breach of its obligations with respect to the Secured Work, such party shall provide Cargill and the Title Company (if it holds the financial security) with written notice of such breach ("Notice of Breach"). The Notice of Breach shall delineate with reasonable specificity each alleged instance of Cargill's breach. Upon receipt of the Notice of Breach, Cargill shall have thirty (30) days ("Cure Period") to cure such breach or failure to perform to the reasonable satisfaction of the notifying party or, if such breach or failure to perform cannot reasonably be cured within thirty (30) days, including, without limitation, due to an event of Force Majeure, to commence and diligently pursue completion of the cure within the Cure Period and provide such notifying party with written notice specifying Cargill's intent to cure such failure as promptly as is reasonably practical and specifically delineating the dates within which Cargill will diligently cure the same ("Cargill's Cure Notice").
- e. In the event FWS or CDFG reasonably believes that Cargill has failed to cure such breach within the Cure Period (or, if applicable, failed to commence and diligently pursue completion of the cure within the Cure Period and to provide Cargill's Cure Notice), FWS or CDFG, as applicable, shall provide Cargill and the Title Company (if it holds the financial security) with written notice of such failure, which notice shall delineate with reasonable specificity each alleged instance of Cargill's uncured breach ("Notice of Failure to Cure"). Upon Cargill's receipt of such Notice of Failure to Cure, the affected Parties agree to meet and confer to work in good faith to attempt to resolve any dispute or disagreement over Cargill's alleged uncured breach. If the affected Parties resolve the dispute or disagreement, they shall promptly notify the bond surety (if a surety bond is the form of financial security provided), issuer of alternate security which FWS or CDFG holds, or Title Company (if it holds the financial security) of the resolution and, if applicable, instruct the Title Company to draw upon and disburse the financial security in accordance with such resolution ("Resolution Instructions").
- f. If the affected Parties have not resolved such dispute within ten (10) days of the date of giving the Notice of Failure to Cure despite such Parties' good faith efforts ("Failed Dispute Process"), FWS or CDFG, as applicable, shall, subject to the limitations set forth in Sections 9(h) below, be entitled to the extent provided in

Section 9(g) below to (I) exercise its rights to proceed against the surety bond (if that is the form of financial security provided) or any alternate security which it holds or (II) proceed against the financial security held in the escrow account by instructing the Title Company ("Draw Instructions") to draw upon and disburse the financial security. Immediately upon its receipt of the Draw Instructions, the Title Company shall draw upon the financial security and disburse the proceeds thereof to FWS, CDFG, or its respective designee in accordance with the Draw Instructions and Section 9(h), below.

- g. In the event FWS or CDFG, as applicable, is entitled to exercise its right to proceed against financial security pursuant to Section 9(f) above, FWS and CDFG each agrees to exercise such right only to the extent such financial security is directly related to the costs and expenses of addressing the specific uncured breach by Cargill and the uncured breach by Cargill was identified in the Notice of Failure to Cure. The amount of financial security to which FWS or CDFG, as applicable, shall be entitled shall not exceed the amount set forth in Exhibit H applicable to the particular Secured Work Cargill failed to perform or, if the applicable Parties have agreed to a revised estimated cost as contemplated by Section 9(c), the amount of such estimated cost applicable to the particular Secured Work Cargill failed to perform.
- h. The provisions of this Section 9(h) shall apply only with respect to financial security held in the escrow account by the Title Company. Cargill shall cause, and the Irrevocable Instructions shall authorize and instruct, the Title Company to disburse the proceeds of the financial security to FWS, CDFG, or its respective designee on the Draw Date (as defined below) in accordance with the Draw Instructions unless only on or before the Draw Date Cargill has commenced Arbitration in accordance with Section 9(i), below and Title Company has received notice of such Arbitration. As used in this Agreement, the "Draw Date" shall mean the later of (I) the tenth (10th) day after the Title Company's receipt of Draw Instructions from FWS or CDFG pursuant to Section 9(f), or (II) the twentieth (20th) day after the Notice of Failure to Cure. Provided, however, that if as of the Draw Date Title Company has received Resolution Instructions, it shall instead comply with such instructions.
- i. As used in this Agreement, "Arbitration" shall mean binding arbitration before a retired judge of the Superior Court, Appellate or Supreme Court of the State of California (the "Arbitrator") under the auspices of Judicial Arbitration and Mediation Services, Inc. ("JAMS"), in accordance with the following provisions:
 - i. In the event that despite the Failed Dispute Process Cargill contests the right of FWS or CDFG to proceed against financial security pursuant to

this Section 9, Cargill shall have the right to submit to Arbitration all unresolved disputes between Cargill and FWS or CDFG that were the subject of the Failed Dispute Process (the "Dispute").

- ii. The Parties stipulate and agree that any and all necessary parties may be joined in the Arbitration, but the Parties agree to proceed with Arbitration of the Dispute even if other parties refuse to participate.
- iii. Arbitration shall be initiated by written notice of a demand to arbitrate (the "Arbitration Notice") given to FWS or CDFG, as applicable, the Title Company and to JAMS. The Arbitration Notice shall include a plain statement of the Dispute and the relief requested. The party submitting such Arbitration Notice shall also submit true and correct copies of the documents referred to therein. Within thirty (30) days of its receipt of the Arbitration Notice, the responding party shall provide to JAMS and to Cargill the responding party's own plain statement of the Dispute, together with true and correct copies of the documents referenced therein.
- iv. The affected Parties may agree on a retired judge from the JAMS panel to be the Arbitrator. If they are unable to promptly agree, either Party may request JAMS to provide the Parties with a list of three available judges and each party may strike one. The remaining judge (or if there are two, the one selected by JAMS) will serve as the Arbitrator. In the event that JAMS shall no longer exist, or if JAMS fails or refuses to accept submission of the Dispute, then the Dispute shall be resolved by binding arbitration before the American Arbitration Association ("AAA") under AAA's Construction Industry Arbitration Rules then in effect, as modified or supplemented by this Section 9(i). In the event of a conflict between this Section 9(i) and such rules, this Section shall govern and control.
- v. Prior to the Arbitration, the Parties shall be allowed the following limited discovery: each Party shall be entitled to receive relevant documents and to take one fact witness deposition. Each Party shall be entitled to take the depositions of all the opposing Parties' experts. Any further discovery shall only be allowed by order of the Arbitrator. All discovery shall be completed fifteen (15) days prior to the Arbitration.
- vi. The Arbitration shall be completed in no more than five (5) full consecutive days. Each party shall have two (2) days to present its position through documentary or live witness evidence. Declarations of witnesses may be submitted in lieu of live witness testimony, provided the declarations have been submitted to the other parties in the proceeding at

least fifteen (15) days prior to the commencement of the Arbitration hearing. One (1) day shall be reserved for argument or the taking of such further evidence as the Arbitrator may require.

- vii. The Arbitrator shall issue a binding decision within thirty (30) days of the conclusion of the Arbitration. The Arbitrator's decision shall be based upon applicable law. The Arbitrator's decision shall be conclusive and binding, and it may be confirmed thereafter as a judgment by the Superior Court of the State of California, subject only to challenge on the ground set forth in California Code of Civil Procedure Section 1286.2. The validity and enforceability of the Arbitrator's decision is to be determined exclusively by the California courts pursuant to the provisions of this Section 9(i).
- viii. Notwithstanding anything contained herein, the Arbitrator shall only be authorized to determine whether or not the applicable portion of the financial security is to be paid and shall have no authority to make any other judgments or awards. In addition, any draw upon the applicable financial security made after the completion of any Arbitration proceeding and on the basis of an Arbitration judgment or award shall be limited to the amount set forth in such judgment or award.
- ix. Any Arbitration between Cargill and FWS shall be conducted in Alameda County, California. Any Arbitration between Cargill and CDFG shall be conducted in Sacramento County, California.
- x. The non-prevailing Party shall bear all reasonable fees and expenses of the Arbitrator.
- j. Financial assurances provided pursuant to this Section 9 shall be issued for a period of at least one (1) year, and shall provide that the expiration date will be automatically extended for a period of at least one (1) year on each successive expiration date unless, at least one hundred twenty (120) days before the current expiration date Cargill, FWS or CDFG, as applicable, and the Title Company (if it holds the security) have received notice from the issuing institution of its decision not to extend the expiration date, as evidenced by the return receipts. The financial assurance mechanism shall provide that any unused portion of the financial security shall be available for one hundred twenty (120) days after the date Cargill, FWS or CDFG, as applicable, and the Title Company (if it holds the security) have received such notice, as shown on the signed return receipts. If a provider of financial assurance fails to extend the expiration date of any financial security, Cargill shall provide FWS and CDFG alternate financial assurance as

specified in this Section 9 within sixty (60) days after receiving the notice such failure. If Cargill does not provide such alternate financial assurance on or before the expiration of such sixty (60)-day period, FWS or CDFG shall have the right to immediately (I) proceed against the surety bond or any alternate security which it holds and hold any resulting proceeds in escrow or (II) proceed against the financial security held in the escrow account by instructing the Title Company to draw upon the entire unused portion of such financial security and hold the same in escrow, in which case the proceeds shall constitute the financial security and be drawn upon and disbursed in accordance with this Section 9.

10. Liability.

- a. Cargill shall, at its sole cost and expense:
 - i. indemnify, protect, defend and hold harmless the United States and the State from and against any and all claims, demands, damages, losses, liabilities, penalties, actions, judgments, costs and expenses (including, without limitation, attorneys' fees and experts' fees) imposed upon, incurred by, or awarded against, the United States or the State (collectively "Claim") to the extent related to or otherwise arising from: (I) failure of Cargill or its agents, employees, contractors or subcontractors to comply with applicable federal, state and local laws, regulations, and other legal requirements in their performance of Cargill's obligations under this Agreement; or (II) any negligent acts or omissions or willful misconduct by Cargill, its agents, employees, contractors or subcontractors, in performance of Cargill's obligations under this Agreement.

In the event that the United States or the State obtains actual knowledge of any Claim that is covered by the indemnity in this Section of the Agreement, the United States or the State, as applicable, shall give Cargill prompt written notice of any such Claim. If the United States or the State does not provide such written notice on or before sixty (60) days after such Party first obtains actual knowledge of such Claim, such Party shall waive its rights under this Section with respect to such Claim and Cargill shall not have any obligations under this Section of the Agreement with respect thereto. To the extent allowed under applicable law, Cargill shall have the right to assume the defense thereof, with counsel reasonably acceptable to the indemnified Party selected by Cargill. Neither Cargill nor the United States or the State (as applicable) shall settle any Claim without the other Party's prior written consent, which may be withheld or granted by (W) such Party in its reasonable discretion; and (X) Cargill in its sole discretion without the approval of the United States or the State (as

applicable) so long as such settlement releases the United States or the State (as applicable) from liability with respect thereto. If the United States or the State settles any such Claim without the prior written consent of Cargill, then Cargill shall be released from liability with respect to such Claim. The indemnity set forth in this Section shall terminate sixty (60) days after the earlier of (Y) three (3) years after the occurrence described in clause (I) or (II) of this subsection (a)(i) or (Z) the last date on which any Claim could validly be asserted under applicable statutes of limitations (collectively the "Claim Period") and Cargill shall have no obligations under this subsection (a)(i) of Section 10 of the Agreement with respect thereto, except to the extent that the United States or the State gives written notice to Cargill of any Claim with respect thereto during the Claim Period and within sixty (60) days of the date on which such Party first obtains actual knowledge of such Claim. This subsection (a)(i) of Section 10 of the Agreement shall survive the expiration or termination of the Agreement.

- ii. maintain throughout the term of this Agreement one or more policies of insurance with financially responsible insurers admitted to transact business in California providing at least the following coverages: (I) workers' compensation insurance (or self-insurance to the extent authorized by law) as required by law, (II) commercial general liability insurance for all activities of Cargill, its agents and employees, applying to personal injury, bodily injury and property damage, and including broad form contractual liability coverage, with a combined single limit of liability of Five Million Dollars (\$5,000,000) per occurrence; and (III) comprehensive vehicle liability insurance for owned, non-owned and hired vehicles, applying to personal injury, bodily injury, and property damage, with a combined single limit of liability of not less than Three Million Dollars (\$3,000,000) per occurrence; with the full policy limits in each case available to the United States Property, the State Property and this Agreement. The policies shall be written on an occurrence basis and shall contain a severability of interest clause. FWS and CDFG shall each be named as an additional insured, but only to the extent coverage would apply arising out of the rights and obligations of this Agreement. Cargill agrees to give FWS and CDFG thirty (30) days' written notice prior to cancellation, termination, alteration or material change to such insurance coverages. Upon request, Cargill shall provide the United States and the State with a certificate of insurance evidencing the required coverages or written evidence reasonably satisfactory to the United States and the State, respectively, of such insurance coverage. Cargill shall provide the United States and the State with satisfactory written evidence of the renewal or

replacement of such policies, in each case no later than thirty (30) days before the expiration date of the current policy. Cargill may maintain any insurance required of it by this Agreement under a plan of self insurance (thereby waiving the insurance policy documentation and notice of cancellation requirements stated above) only so long as Cargill shall:

- (1) have an active safety and loss prevention program that seeks to minimize the frequency and magnitude of third party damages caused by accidental occurrences and other self-insured losses; and
- (2) have procedures for and a recent history of timely investigation and resolution of any claims for third party damages caused by accidental occurrences and other self-insured losses; and
- (3) maintain reserves for payment of claims of liability against Cargill which are appropriate under generally accepted accounting principles and practice consistently applied for contingent liabilities.

The ability to self insure shall be personal to Cargill and shall be inapplicable to any assignee or successor to Cargill, unless FWS or CDFG, as applicable, each otherwise agrees in writing in its sole discretion. Any lawful award for damages shall not be limited by the insurance coverages required under this Agreement.

During the term of this Agreement, Cargill shall require all contractors and subcontractors with whom Cargill contracts to conduct work on or about the United States Property or the State Property ("Contractor Policies") to maintain the following minimum coverage limits of insurance: (I) workers' compensation insurance as required by law, (II) commercial general liability insurance applying to personal injury, bodily injury and property damage, and including broad form contractual liability coverage, with a combined single limit of liability of Two Million Dollars (\$2,000,000) per occurrence; and (III) comprehensive vehicle liability insurance for owned, non-owned and hired vehicles, applying to personal injury, bodily injury and property damage, with a combined single limit of liability of not less than Two Million Dollars (\$2,000,000) per occurrence. The Contractor Policies furthermore shall require all such contractors and subcontractors prior to any work on the United States Property or the State Property to furnish FWS or CDFG (as applicable) with evidence of insurance that describes the insurance coverages specified herein and names FWS or CDFG (as applicable) as additional insured and to include in such evidence of insurance a provision whereby FWS or CDFG (as applicable) shall receive thirty (30) days advance written notice before

termination, change, or cancellation of coverage takes effect.

- b. Without limiting any other remedies, if any, available to Cargill in law, equity or otherwise, the United States agrees to cooperate, to the extent allowed by law, in the submission of claims pursuant to the Federal Tort Claims Act against the United States for personal injuries or property damage resulting from the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his or her employment, arising out of this Agreement. Further, FWS agrees that the use of the United States Property by its employees shall be effected with all reasonable diligence and precaution to avoid damage to the land, property, or personnel of Cargill (*See* 28 U.S.C. §1491). FWS will require adequate liability insurance and workman compensation coverage be obtained, carried and maintained by its agents, contractors and subcontractors who perform work or conduct activities on the United States Property. FWS will require any of its volunteers doing any tasks on the United States Property to sign a Volunteer Form (Optional Form 301) which makes them Federal Employees for the purpose of being covered by the Federal Tort Claims Act and Federal Workers Compensation Act (16 U.S.C. §742(c)(3)).
- c. Without limiting any other remedies, if any, available to Cargill in law, equity or otherwise, to the extent provided by law, including but not limited to the California Tort Claims Act (Government Code Section 810 *et seq.*), the State shall be liable for any injury to persons or property proximately caused by any negligent acts or omissions of its employees, agents or representatives arising out of this Agreement.
- d. FWS and CDFG, as applicable, shall bear the sole risk of loss for all infrastructure on, under or about the Property after the Close of Escrow, except as otherwise expressly provided in this Section 10(d) and Sections 1(a)(iii), 2, 4(e), and 5. During the term of this Agreement, Cargill agrees to repair or replace any infrastructure to the extent damaged or destroyed by (I) Cargill's acts or omissions or the acts or omissions of any Cargill Parties; or (II) Cargill's ordinary and customary use of such infrastructure. Notwithstanding the foregoing, Cargill shall adequately maintain all infrastructure used in its performance of its obligations hereunder (the standard of maintenance to which Cargill will be held is that standard ordinary and customary to its historic active operations, despite the fact that Cargill's active salt making operations on the Property shall have ceased).
- e. Cargill disclaims, without limitation, any representation or warranty relating to fitness for any particular purpose, except as otherwise expressly set out in this Agreement, regarding its performance of the Cargill Activities.

11. Force Majeure. Force majeure, for the purposes of this Agreement, is defined as any event arising from causes beyond the reasonable control of a Party or a contractor, subcontractor or representative of such Party, that delays the performance of any obligation under this Agreement and could not have been overcome or prevented by that Party's exercise of commercially reasonable due diligence. "Force majeure" does not include financial inability to complete any obligation pursuant to this Agreement, the increased costs or expenses of obligations to be performed under this Agreement, or the failure to make timely application for any permits or approvals any Party is obligated under this Agreement to obtain or to provide all information required for such applications in a timely manner. When a Force Majeure event occurs that may delay the Completion Dates, the Party asserting Force Majeure shall notify any other affected Party in writing within seven (7) days of the time when the Party asserting Force Majeure had actual knowledge that such delay would result from such event; this written notice shall state the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable for implementing these measures. Those obligations under this Agreement that are affected by the Force Majeure shall be extended for such time as is necessary to complete the obligations; provided, however, that if Force Majeure extensions equal ninety (90) days in the aggregate no further extension will be allowed unless the other affected Party or Parties agree, each in the exercise of its reasonable discretion, that the delay or anticipated delay is attributable to a Force Majeure event.
12. Site Access and Notice. FWS and CDFG hereby grant Cargill and its authorized representatives, contractors, or agents a non-exclusive license to enter the Property for the limited purpose of performing Cargill's obligations under this Agreement subject to the rights of FWS and CDFG to terminate the obligations and access of Cargill under this Agreement as provided in Section 16(b); provided, however, Cargill shall utilize in its performance of Cargill's Activities the Best Management Practices identified in the Existing O&M Permits.
13. 1979 Operating Agreement. Previously, the United States and Leslie Salt Co., a predecessor in interest to Cargill, entered into an Agreement dated June 29, 1979 ("1979 Operating Agreement") regarding their rights and responsibilities regarding certain real property rights held by Leslie Salt Co., including but not limited to the Reserved Rights of Grantor. The terms and conditions of the 1979 Operating Agreement, to the extent relating to the United States Rights that are being acquired under the Conveyance Agreement, shall not be interpreted to amend or otherwise alter any term or condition of this Agreement. The 1979 Operating Agreement shall remain in full effect as to all Reserved Rights of Grantor not conveyed to the United States as the United States Rights under the Conveyance Agreement.
14. Definitions. As used herein the following definitions shall apply:

- a. "AAA" is defined in Section 9(i)(iv).
- b. "A-22/23 Activities" is defined in Section 1(a)(iii)(a).
- c. "A-22/23 Standard" is defined in Section 1(a)(iii)(a).
- d. "A-22/23 Term" is defined in Section 1(a)(iii)(b).
- e. "Additional O&M Services" is defined in Section 2(c).
- f. "Affiliate" is defined in Section 1(d)(i).
- g. "Agreement" is defined in the introduction to this Agreement.
- h. "Agreement Date" is defined in the introduction to this Agreement.
- i. "alternate security" is defined in Section 9(a)(iv).
- j. "Alviso Evaporating Ponds" are defined in Recital B.
- k. "Alviso High Salinity Ponds" means Ponds A-19, A-20, A-21, A-22, and A-23 that are located in the portion of the United States Property illustrated on the Map (attached as Exhibit A) by the area identified as the "Alviso Evaporating Ponds" and more particularly described in the Conveyance Agreement.
- l. "Arbitrator" is defined in Section 9(i).
- m. "Arbitration" is defined in Section 9(i).
- n. "Arbitration Notice" is defined in Section 9(i)(iii).
- o. "Baumberg Evaporating Ponds" are defined in Recital B.
- p. "Bay Waters" means water from the San Francisco Bay, sloughs, rivers, streams (including intermittent streams), or other watercourses.
- q. "Best Management Practices" is defined in Section 12.
- r. "bittern" means the liquid that remains after sodium chloride salt is harvested and most of the water has evaporated from San Francisco Bay water.

- s. "Cargill" is defined in the introduction to this Agreement.
- t. "Cargill's Activities" is defined in Section 3.
- u. "Cargill Completion" is defined in Section 1.
- v. "Cargill's Cure Notice" is defined in Section 9(d).
- w. "Cargill Liens" is defined in Section 3(e).
- x. "Cargill's Parties" is defined in Section 3(d).
- y. "CDFG" is defined in the introduction to this Agreement.
- z. "Claim" is defined in Section 10(a)(i).
- aa. "Claim Period" is defined in Section 10(a)(i).
- bb. "Close of Escrow" has the same meaning as that defined in the Conveyance Agreement.
- cc. "Closure Notice" is defined in Section 1(d)(iii).
- dd. "Closure Report" is defined in Section 1(d).
- ee. "Closure Report Services" is defined in Section 1(d)(i).
- ff. "Completion Dates" is defined in Section 4.
- gg. "Conditions Of Transfer" is defined in Section 1.
- hh. "Contractor Policies" is defined in Section 10(a)(ii).
- ii. "Conveyance Agreement" is defined in Recital A.
- jj. "Cure Notice" is defined in Section 9(e).
- kk. "Cure Period" is defined in Section 9(e).
- ll. "Dispute" is defined in Section 9(i)(i).
- mm. "Draw Date" is defined in Section 9(h).

- nn. "Draw Instructions" is defined in Section 9(f).
- oo. "Dry" means Cargill has removed substantially all of the liquid from the surface and from borrow ditches in an identified Pond, to make the Pond dry, including using all reasonable efforts such as portable pumps.
- pp. "Dry Transfer Condition" is defined in Section 1(a)(i)(2).
- qq. "Effective Date" is defined in Section 16(i).
- rr. "Environmental Law" has the same meaning as that defined in the Conveyance Agreement.
- ss. "Existing O&M Permits" is defined in Section 7(d)(i).
- tt. "Expenses" is defined in Section 3(f).
- uu. "Failed Dispute Process" is defined in Section 9(f).
- vv. "Force Majeure" is defined in Section 11.
- ww. "FWS" is defined in the introduction to this Agreement.
- xx. "gypsum" means an inert, naturally occurring component of seawater that precipitates out of solution, generally into solid layers, before sodium chloride (table salt) does in the solar salt-making process.
- yy. "Independent Licensed Professional" is defined in Section 1(d)(i).
- zz. "Independent Reviewer" is defined in Section 1(d)(i).
- aaa. "initial stewardship plan" is defined in Recital F.
- bbb. "Installation" is defined in Section 2(b).
- ccc. "Introduced Waters" is defined in Section 1(a)(i)(2)(a).
- ddd. "Irrevocable Instructions" is defined in Section 9(a).
- eee. "JAMS" is defined in Section 9(i).

- fff. "List" is defined in Section 1(d)(i).
- ggg. "Low Salinity Ponds" means each and every of the Ponds other than Ponds A-19, A-20, A-21, A-22, and A-23 that are located in the portion of the Property illustrated on the Map (attached as Exhibit A) by the areas identified as the "Alviso Evaporating Ponds" and "Baumberg Evaporating Ponds" and more particularly described in the Conveyance Agreement.
- hhh. "Map" is defined in Recital B.
- iii. "Napa Marsh Restoration Project" means CDFG's project to restore and manage the former Cargill salt ponds on the west side of the Napa River, across from the Napa Plant Site.
- jjj. "Napa Objective" is defined in Section 5(a).
- kkk. "Napa Plan" is defined in Section 5(a).
- lll. "Napa Plant Site" means the portion of the State Property illustrated on the Map (attached as Exhibit A) by the area identified as the "Napa Plant Site" and more particularly described in the Conveyance Agreement.
- mmm. "Napa Ponds" is defined in Section 5(a).
- nnn. "Napa Pond Work" is defined in Section 5(a).
- ooo. "Napa Requirements" is defined in Section 5(b).
- ppp. "Napa Restoration Plan" is defined in Section 5(b).
- qqq. "Napa Site Diagram" is defined in Section 5(e).
- rrr. "Newark Plant Site" is defined in Recital B.
- sss. "Notice" is defined in Section 15.
- ttt. "Notice Of Breach" is defined in Section 9(d).
- uuu. "Notice Of Failure To Cure" is defined in Section 9(e).
- vvv. "Operation and Maintenance" or "O&M" is defined in Section 2(a).

www. "Party" or "Parties" is defined in the introduction to this Agreement.

xxx. "Phase Out Removal Work" is defined in Section 1(c).

yyy. "Physical Condition" is defined in Section 1(a)(i)(1) and is specified in Exhibit B.

zzz. "Pond" and "Ponds" are defined in Recital B.

aaaa. "Pond SF-2" had the same meaning as that defined in the Conveyance Agreement.

bbbb. "Ponds A-22/A-23 Standard" is defined in Section 1(a)(ii)(1)(a).

cccc. "Property" is defined in Recital A.

dddd. "Redwood City Bitterns" are defined in Section 8.

eeee. "Redwood City Plant Site" is defined in Recital B.

ffff. "Refuge" means the Don Edwards San Francisco Bay National Wildlife Refuge as it exists as of the Effective Date.

gggg. "Release" is defined in Section 3(d).

hhhh. "Reserved Rights of Grantor" has the same meaning as that defined in the Conveyance Agreement.

iiii. "Resolution Instructions" is defined in Section 9(e).

jjjj. "RWQCB" means the California Regional Water Quality Control Board - San Francisco Bay Region.

kkkk. "salt" or "salts" means sodium chloride.

llll. "Salt Removal Revenue" is defined in Section 3(f).

mmmm. "Secured Work" is defined in Section 9.

nnnn. "SF-2 Structure" is defined in Section 4(d).

oooo. "South Bay Ponds" are defined in Recital B.

pppp. "State" is defined in the introduction to this Agreement.

- qqqq. "State Property" has the same meaning as that defined in the Conveyance Agreement.
- rrrr. "Transfer Standard" is defined in Section 1(a)(i).
- ssss. "United States" is defined in the introduction to this Agreement.
- tttt. "United States Property" has the same meaning as that defined in the Conveyance Agreement.
- uuuu. "United States Rights" has the same meaning as that defined in the Conveyance Agreement.
- vvvv. "Updated List" is defined in Section 1(d)(iii)(2).
- www. "West Bay Evaporating Ponds" are defined in Recital B.
- xxxx. "West Bay Ponds" means Ponds RC-1, RC-2, RC-3, RC-4, RC-5 and SF-2 that are located in the portion of the United States Property illustrated on the Map (attached as Exhibit A) by the area identified as the "West Bay Evaporating Ponds" and more particularly described in the Conveyance Agreement.
- yyyy. "Wet" means substantial portions of the bottom of an identified Pond are covered with liquid.
- zzzz. "Wet Transfer Condition" is defined in Section 1(a)(i)(1).
- aaaa. "Wildlife" means all wild animals, birds, plants, fish, amphibians, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability.
- bbbb. "1979 Operating Agreement" is defined in Section 13.
15. Notices. Any notice, demand, request, approval, consent or other communication required or desired to be given under this Agreement ("Notice") shall be in writing and shall be given in the manner set forth below, addressed to the Party to be served at the address set forth below, or at such other address for which that Party may have given notice under the provisions of this Section of the Agreement. Any Notice given by (a) overnight common carrier courier service shall be deemed to be given on the business day immediately following the date it was deposited with such common carrier which has been reasonably approved by the parties (Federal Express, UPS and DHL Worldwide

Express being deemed approved by the parties), postage prepaid; or (b) delivery in person or by messenger shall be deemed to have been given upon delivery in person or by messenger; or (c) receipt-confirmed fax shall be deemed given on the date sent or the next business day, if not sent on a business day if a hard copy is thereafter delivered under (a) or (b) above.

To the United States:

<u>to:</u>	<u>with a copy to:</u>
U.S. Fish and Wildlife Service	U.S. Department of the Interior
San Francisco Bay National Wildlife Refuge Complex	Office of the Field Solicitor
#1 Marshlands Road	1111 Jackson Street, Suite 735
Fremont, California 94536	Oakland, California 94607
Attn: Refuge Complex Manager	Attn: Field Solicitor
Phone: (510)792-0222	Phone: (510) 817-1460
Fax: (510) 792-5828	Fax: (510) 419-0143

To the State:

<u>to:</u>	<u>with a copy to:</u>
California Department of Fish and Game Central Coast Region	California Department of Fish and Game Office of the General Counsel
P.O. Box 47	1416 9th Street, 12th Floor
Yountville, California 94599	Sacramento, California 95814
Attn: Regional Manager	Attn: General Counsel
Phone: (707) 944-5500	Phone: (916) 654-3821
Fax: (707) 944-5563	Fax: (916) 654-3805

To Cargill:

<u>to:</u>	<u>with a copy to:</u>
Cargill Salt	Cargill, Inc. Law Department/24
7220 Central Avenue	15407 West McGinty Road
Newark, California 94560-4205	Wayzata, Minnesota 55391
Attn: Environmental Manager	Attn: Salt Attorney/SF Bay Area
Phone: (510) 790-8605	Phone: (952) 742-6334
Fax: (510) 790-8180	Fax: (952) 742-6349

16. Miscellaneous.

- a. Parties in Interest; Assignment. This Agreement shall be binding upon and shall inure to the benefit of each Party and its respective successors and permitted assigns; provided, however, no Party shall assign any of its rights or obligations under this Agreement without the prior written consent of the other Parties. Nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement.
- b. Amendment; Waivers. This Agreement and any Exhibit or Schedule attached hereto may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement shall be effective unless in writing and signed by the party to be bound and then only to the specific purpose, extent and instance so provided. In the event that FWS or CDFG in their sole and complete discretion agree to waive all or part of Cargill's obligations under this Agreement with respect to all or part of the Property, this Agreement shall terminate with respect to the portion of the obligations and corresponding provisions of this Agreement affected by such waiver.
- c. Severability. If any provision of this Agreement is determined to be illegal or unenforceable, in whole or in part, such determination shall not affect any other provisions of this Agreement or the remaining portion of a provision of which a portion has been deemed to be illegal or unenforceable, and all other such provisions or portions shall remain in full force and effect.
- d. Exhibits and Schedules; Integration. Each Exhibit and Schedule delivered pursuant to the terms of this Agreement shall be in writing and shall constitute a

part of this Agreement, although such Exhibits and Schedules need not be attached to each copy of this Agreement. This Agreement, together with such Exhibits and Schedules, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the parties in connection therewith.

- e. Headings. The descriptive headings of the Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.
- f. Counterparts. This Agreement may be executed in multiple counterparts each of which shall constitute an original as against the Party signing the counterpart and all of which, taken together, shall constitute one and the same document.
- g. Governing Law. This Agreement shall be construed in accordance with the laws of the United States and the law of the State of California.
- h. Approvals. This Agreement is subject to the approval of the Conveyance Agreement (to which this Agreement is an Exhibit) by the Wildlife Conservation Board (as defined in California Fish and Game Code Section 1320) following a public meeting and the Director of the California Department of General Services.
- i. Effective Date. The effective date of this Agreement is the date on which it is fully executed by the Parties and all necessary approvals have been obtained. In no event, however, shall the Effective Date be later than the date of Close of Escrow. If Escrow does not close and the Conveyance Agreement is terminated, whether by its terms or by mutual agreement of the Parties thereto, this Agreement shall terminate.
- j. Limitation On Liability. The obligations of Cargill are intended to be binding only on the property of Cargill and shall not be personally binding upon, nor shall any resort be had to, the private properties of any of its trustees, officers, beneficiaries, directors, members or shareholders or any employees or agents of Cargill.
- k. No Recording; No Property Interest. No Party may record this Agreement or any memorandum or short form thereof. This Agreement shall not constitute a reservation by Cargill of any ownership interest in the Property or any portion thereof.
- l. Survival. Except as expressly set forth to the contrary herein, no representations, warranties, covenants or agreements of Cargill contained herein shall survive the

termination of this Agreement.

- m. Expenses. Except as otherwise expressly provided in this Agreement, each Party shall pay its own expenses incurred in connection with this Agreement.
- n. No Third Party Beneficiary. The provisions of this Agreement are and will be for the benefit of Cargill, FWS and CDFG only and are not for the benefit of any third party.
- o. Term. Once this Agreement becomes effective, it shall remain in full force and effect until Cargill has fully performed its obligations hereunder; provided, however, that in the event Escrow does not close pursuant to the Conveyance Agreement, this Agreement shall immediately terminate and no Party shall have any further obligation under this Agreement.

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IN WITNESS WHEREOF, the parties have executed this Phase Out Agreement
as of the date first written above.

CARGILL, INCORPORATED
a Delaware Corporation

By:  _____

William C. Britt
Vice President

Dated: 1/13/03

THE UNITED STATES OF AMERICA

By: _____

Steve Thompson
Manager, California/Nevada Operations Office
U.S. Fish and Wildlife Service

Dated: _____

STATE OF CALIFORNIA
by and through its
Department of Fish and Game

By: _____

Robert C. Hight
Director

Dated: _____

IN WITNESS WHEREOF, the parties have executed this Phase Out Agreement
as of the date first written above.

CARGILL, INCORPORATED
a Delaware Corporation

By: _____
William C. Britt
Vice President

Dated: _____

THE UNITED STATES OF AMERICA

By: Steve Thompson
Steve Thompson
Manager, California/Nevada Operations Office
U.S. Fish and Wildlife Service

Dated: 1/13/2003

STATE OF CALIFORNIA
by and through its
Department of Fish and Game

By: _____
Robert C. Hight
Director

Dated: _____

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CARGILL, INCORPORATED
a Delaware Corporation

By: _____
William C. Britt
Vice President

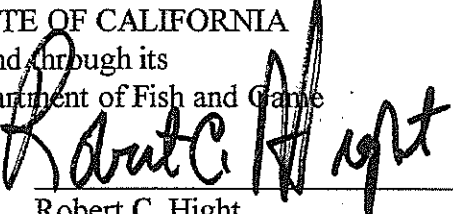
Dated: _____

THE UNITED STATES OF AMERICA

By: _____
Steve Thompson
Manager, California/Nevada Operations Office
U.S. Fish and Wildlife Service

Dated: _____

STATE OF CALIFORNIA
by and through its
Department of Fish and Game

By:  _____
Robert C. Hight
Director

Dated: 1-13-03

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CARGILL, INCORPORATED
a Delaware Corporation

By: _____
William C. Britt
Vice President

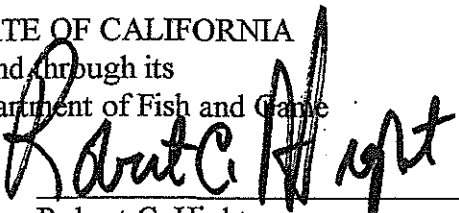
Dated: _____

THE UNITED STATES OF AMERICA

By: _____
Steve Thompson
Manager, California/Nevada Operations Office
U.S. Fish and Wildlife Service

Dated: _____

STATE OF CALIFORNIA
by and through its
Department of Fish and Game

By:  _____
Robert C. Hight
Director

Dated: 1-13-03

EXHIBIT A

Map illustrating areas (including names) of the Property





EXHIBIT B

Chart^{1,2} identifying physical condition (Wet or Dry) of Ponds
(as defined in Section 1(a)(i)(1))

Pond Number	Wet	Dry	Proposed Interim Habitat	Comments
Alviso Ponds				
A1	X			
A2W	X			
B1	X			
B2	X			
A2E	X			
A3W	X			
A3N ²	X	X	Seasonal	Salinity of Pond can elevate rapidly in spring or summer.
A5	X			
A7	X			
A8	X	X	Seasonal	
A8S	X	X	Seasonal	Pond is dry now for snowy plovers.
A9	X			
A10	X			
A11	X			
A12	X			
A13	X			
A14	X			
A15	X			
A16	X			
A17	X			
A19	X	X	Tidal/Seasonal	Salinity of Pond can elevate rapidly in spring and summer. Gypsum present.
A20	X	X	Tidal/Seasonal	" "

Pond Number	Wet	Dry	Proposed Interim Habitat	Comments
A21	X	X	Tidal/Seasonal	" "
A22	X	X	Seasonal	Ponds are now kept fairly dry for snowy plovers. Gypsum present.
A23	X	X	Seasonal	" "
Baumberg Ponds				
1	X			
2	X			
4	X			
5	X			
6	X			
7	X			
1C	X			
2C	X			
4C	X			
5C	X			
6C	X			
10	X			
11	X			
12	X	X	Seasonal	Salinity of Pond can elevate rapidly in spring and summer. Gypsum present.
13	X	X	Seasonal	" "
14	X	X	Seasonal	" "
9	X	X		Wet conditions in rainy months. Gypsum present.
8A	X	X		" "
8	X	X		" "
6A	X	X	Seasonal	Wet conditions in rainy months.

Pond Number	Wet	Dry	Proposed Interim Habitat	Comments
6B	X	X	Seasonal	Wet conditions in rainy months
West Bay Ponds				
1	X			Gypsum present
2	X			" "
3	X			" "
4	X			" "
5	X			" "
SF2	X			Gypsum present. Some high ground may be exposed.

¹ For the purposes of this chart, the initial salinity discharge limit is assumed to be 13 Baume or 150 ppt. If the Regional Water Quality Control Board requires a lower salinity level for the initial discharge, the process described in Section 1(b) of this Agreement may be followed.

² For those ponds where both "wet" and "dry" physical conditions are indicated, the condition at transfer will depend on seasonal conditions, precipitation patterns, etc. Generally, in the winter the ponds will be transferred "wet" and in the summer the ponds will be transferred "dry."

EXHIBIT C

Testing Protocol and Report Outline for Closure Report (as defined in Section 1(d)(iv))



EXHIBIT C

CLOSURE REPORTS: TESTING PROTOCOL AND REPORT OUTLINE

This Exhibit describes the testing protocol and report outline to be used in completing the Closure Reports described in Section 1(d)(iv) of this Agreement. These Closure Reports are applicable to Ponds A1-A17 (excluding A4) and A19-21 of the Alviso Unit, all Ponds in the Baumberg Unit and all Ponds in the West Bay Unit.

Testing Protocol

Review of Transfer Standard:

The Independent Licensed Professional (ILP) shall be provided with and will thoroughly review Section 1 (and applicable definitions), Exhibit B and Exhibit C of the Agreement and any applicable permits issued by the Regional Water Quality Control Board (RWQCB) for discharge of surface waters from the South Bay Ponds.

Collection of Samples and Analytical Methods:

The ILP shall accompany the Cargill designee and closely observe all sampling efforts. The following sample locations and number of samples are presumed to provide samples representative of the average conditions in each Pond and shall be utilized in collecting samples under this Testing Protocol. However, if the ILP demonstrates that the sample locations or number of samples specified are not representative of the average properties of the whole Pond being sampled, the ILP may independently collect additional samples in the same location or at alternative locations, in addition to the samples collected by Cargill.

Sample locations in each Pond are shown on Figure 1. These locations generally provide good access and are representative of Pond conditions. Collection of samples will take place where there is adequate circulation and at approximately mid-depth level (1/2 the level of the brine). Sampling locations may be changed, as appropriate, if inclement weather makes the sampling point inaccessible or to a point where the Pond has better circulation and is more representative of the Pond condition. Cargill will consult with the ILP prior to a change in the sampling location for any Pond. At least one sample will be taken for each Pond for which a Closure Report is requested.

Salinity: Samples for salinity shall be measured in the field in Baume using a new hydrometer and thermometer for each continuous period of field effort. The Baume measurement shall be corrected for temperature, using the correction table attached as Table 1. Both the actual Baume measurement and the temperature-corrected Baume number will be recorded, but the temperature-corrected Baume number will be used as the final sample measurement. The final report will include both these measurements, as well as a conversion from Baume to salinity using Table 2, the Conversion Table for Baume to Salinity.

Other Parameters: Required sampling and analysis for parameters other than salinity, if any, shall be completed using techniques generally recognized and accepted as standard by a laboratory certified by the California State Department of Health Services to perform such analysis, or as otherwise required by the applicable RWQCB permits. If additional sample collection is required, each sample will be taken under the supervision of the ILP and placed into a 2-liter high density polyethylene (HDPE) or equivalent material container (with the proper preservative added per the laboratory's instructions) and immediately sealed

Specific methods of analysis must be identified on each laboratory report. Any modifications to standard methods to eliminate known interferences shall be reported with the sample results. The method used shall also be reported. Analysis shall be expedited, if necessary, to meet the due dates specified in Section 1(d) of the Agreement.

Chain-of-custody procedures shall be established and followed to ensure that specific individuals are responsible for sample integrity from commencement of sample collection through delivery to an approved laboratory.

Confirmation of Removal of Brines from Dry Ponds

The ILP will inspect the Dry Pond and record the condition of the Pond. Cargill will relate the activities it has conducted to meet this criteria to the ILP. The ILP will record these activities for inclusion in the Closure Report. If the ILP determines that the Pond does not meet the Dry standard, the ILP will identify any additional efforts necessary to meet the Dry standard.

Closure Report Outline

I. Scope of Work - Pond(s) Description

A. Identify Pond(s) addressed by the Closure Report

B. Include site vicinity location map and scaled plot plan showing sampling locations

II. Investigative Methods

A. Brief narrative of work done

B. For each Pond sample collected or inspection performed

1. date and time of sample collection or inspection

2. names, titles, and affiliations of any individuals present

3. collection or inspection techniques used

C. Tabular summary of all analytical data collected

Include field data results of the Baume measurements for each Pond (both direct and temperature-corrected) and the conversion of this data to salinity

D. If laboratory analysis conducted

1. Laboratory analytical methods

2. Laboratory sheets of analysis

3. Chain of custody summary

III. Conclusion

A. Representation by the Independent Licensed Professional (ILP) that the ILP has conducted a review in accordance with the above Testing Protocol and that in the ILP's opinion:

1. For those Ponds that are to be left at Cargill Completion in the Physical Condition specified in Exhibit B of the Agreement as Wet, that the liquid in each such Pond meets the applicable RWQCB permit discharge requirements for the initial discharge of surface waters from that Pond; or

2. For those Ponds that are to be left at Cargill Completion in the Physical Condition specified in Exhibit B of the Agreement as Dry, that the Pond is Dry and Cargill has used reasonable efforts to remove substantially all of the liquid from the surface and from borrow ditches, including the use of portable pumps where necessary

B. Signature of Independent Licensed Professional

C. Credentials –brief statement of relevant qualifications of ILP.

EXHIBIT C

Table 1

TEMPERATURE CORRECTIONS FOR BAUME READINGS

Temperature	Baume Range				
°F	0 - 2° Be'	2 - 4° Be'	4 - 8° Be'	8 - 16° Be'	Plus 16° Be'
50	-0.14	-0.16	-0.18	-0.24	-0.28
51	-0.12	-0.14	-0.17	-0.21	-0.25
52	-0.11	-0.12	-0.15	-0.19	-0.22
53	-0.10	-0.11	-0.13	-0.17	-0.19
54	-0.08	-0.09	-0.11	-0.14	-0.17
55	-0.07	-0.08	-0.09	-0.12	-0.14
56	-0.05	-0.06	-0.07	-0.09	-0.11
57	-0.04	-0.05	-0.06	-0.07	-0.08
58	-0.02	-0.03	-0.04	-0.05	-0.06
59	-0.01	-0.02	-0.02	-0.02	-0.03
60	0.00	0.00	0.00	0.00	0.00
61	+0.02	+0.02	+0.02	+0.03	+0.03
62	+0.04	+0.05	+0.05	+0.06	+0.06
63	+0.06	+0.07	+0.07	+0.08	+0.09
64	+0.09	+0.09	+0.10	+0.11	+0.12
65	+0.10	+0.11	+0.12	+0.14	+0.15
66	+0.13	+0.14	+0.15	+0.17	+0.18
67	+0.15	+0.16	+0.17	+0.19	+0.21
68	+0.17	+0.18	+0.20	+0.22	+0.24
69	+0.19	+0.20	+0.22	+0.25	+0.27
70	+0.21	+0.23	+0.24	+0.28	+0.30
71	+0.24	+0.25	+0.27	+0.30	+0.33
72	+0.26	+0.27	+0.29	+0.33	+0.36
73	+0.28	+0.29	+0.32	+0.36	+0.39
74	+0.30	+0.32	+0.34	+0.39	+0.42
75	+0.32	+0.34	+0.37	+0.42	+0.45
76	+0.34	+0.36	+0.39	+0.44	+0.48
77	+0.36	+0.38	+0.41	+0.47	+0.51
78	+0.39	+0.41	+0.44	+0.50	+0.54
79	+0.41	+0.43	+0.46	+0.53	+0.57
80	+0.43	+0.45	+0.49	+0.56	+0.60
81	+0.45	+0.48	+0.51	+0.58	+0.63
82	+0.47	+0.50	+0.54	+0.61	+0.66
83	+0.49	+0.52	+0.56	+0.64	+0.69
84	+0.51	+0.54	+0.59	+0.67	+0.72
85	+0.54	+0.57	+0.61	+0.69	+0.75
86	+0.56	+0.59	+0.63	+0.72	+0.77
87	+0.58	+0.61	+0.66	+0.75	+0.80

88	+0.60	+0.64	+0.68	+0.77	+0.83
89	+0.62	+0.66	+0.71	+0.80	+0.86
90	+0.64	+0.68	+0.73	+0.83	+0.89
91	+0.66	+0.70	+0.76	+0.86	+0.92
92	+0.68	+0.73	+0.78	+0.88	+0.95
93	+0.71	+0.75	+0.81	+0.91	+0.98
94	+0.73	+0.77	+0.83	+0.94	+1.01
95	+0.75	+0.79	+0.85	+0.97	+1.04
96	+0.77	+0.82	+0.88	+0.99	+1.07
97	+0.79	+0.84	+0.90	+1.02	+1.10
98	+0.81	+0.86	+0.93	+1.05	+1.13
99	+0.83	+0.89	+0.95	+1.08	+1.16
100	+0.86	+0.91	+0.98	+1.10	+1.19

Table 2

BAUME TO SALINITY CONVERSION TABLE

Baume	Salinity (ppt)
0.5	7.2
1.0	12.2
1.5	17.1
2.0	22.1
2.5	27.1
3.0	32.1
3.5	37.2
4.0	42.2
4.5	47.3
5.0	52.4
5.5	57.5
6.0	62.7
6.5	67.8
7.0	73.0
7.5	78.2
8.0	83.5
8.5	88.7
9.0	94.0
9.5	99.3
10.0	104.6
10.5	109.9
11.0	115.2
11.5	120.6
12.0	126.0
12.5	131.4
13.0	136.8

13.5	142.3
14.0	147.8
14.5	153.3
15.0	158.8
15.5	164.3
16.0	169.9
16.5	175.4
17.0	181.0
17.5	186.7
18.0	192.3
18.5	198.0
19.0	203.6
19.5	209.3
20.0	215.0
20.5	220.8
21.0	226.5
21.5	232.3
22.0	238.1
22.5	244.0
23.0	249.8
23.5	255.7
24.0	261.5
24.5	267.5
25.0	273.4
25.5	279.3
26.0	285.3

SAMPLING LOCATIONS

Legend

- Sampling Locations
- B2 Concentrator number
- ⊠ Multipurpose pump
- ⊡ Pump with single direction of discharge
- ⊙ Dredge lock entered/exited
- Dredge lock
- ⊢ Box or gate between concentrators, indicating direction of brine flow
- Siphon between concentrators
- Direction of flow in brine channel
- Gated intake structures

Not to Scale - Graphic Representation Only

EXHIBIT D

Self-contained management groups of Ponds
(as defined in Section 1(e))

EXHIBIT D

POND UNITS FOR CLOSURE

(each bullet point signifies a Pond or Pond unit that can be closed independently of other Ponds or Pond units)

Alviso

- A1, A2W
- A2E, B1, B2, A3W
- A3N
- A5, A7
- A8
- A8S
- A9, A10, A11, A14, A12, A13, A15
- A16, A17
- A19
- A20
- A21
- A22, A23

Baumberg

- 10, 11
- 12, 13
- 14
- 9, 8A
- 8
- 6A, 6B
- 1, 2, 4, 7
- 6, 5, 6C, 5C, 4C, 2C
- 1C

Napa

- 9, 10
- B1, B2, B3, Unit 3
- Crystallizers

West Bay

- 1, 2, 3, 4, 5, 5S
- SF-2

EXHIBIT E

Cargill's estimate of the tonnage of salts present in the Napa Ponds
as of the Agreement Date

EXHIBIT E

ROUGH TONNAGE OF SALTS PRESENT IN THE NAPA PONDS

Pond	Salts in Tons
Pond 9	20,000
Pond 10	70,000
B1	55,000
B2	110,000
B3	15,000
Unit 3	100,000
Crystallizer 1	45,000
Crystallizer2	45,000
Crystallizer 3	30,000
Crystallizer 4	50,000
Crystallizer5	35,000
Crystallizer 6	30,000
Crystallizer 7	30,000
Crystallizer 8	35,000
Crystallizer 9	35,000
Total	705,000

EXHIBIT F

Napa Site Diagram
(as defined in Section 5)



Exhibit F
Napa Plant Site

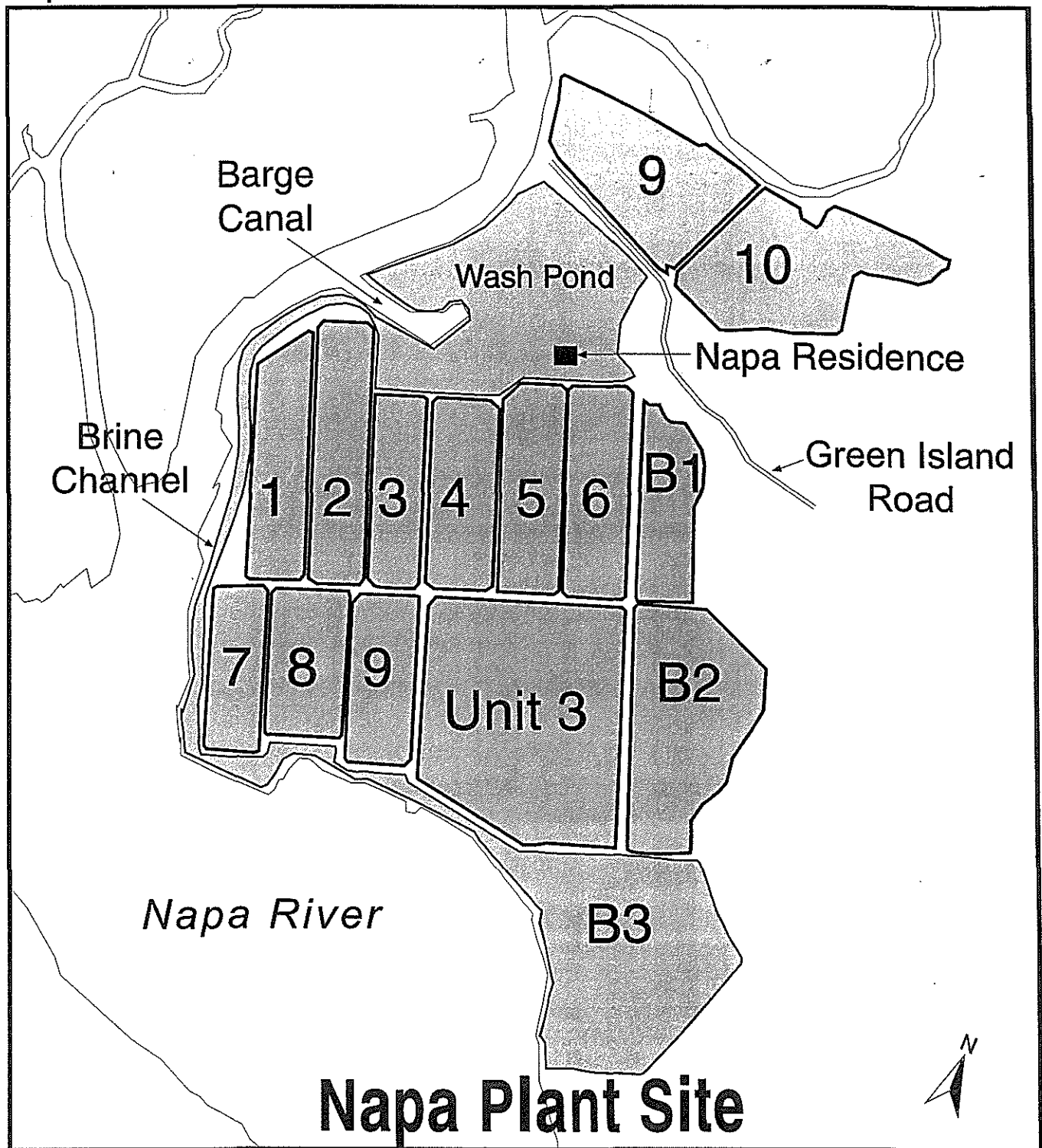


EXHIBIT G

Cost sharing arrangements for RWQCB permit applications

The following shall apply to costs incurred after the signing of the Framework Agreement (May 29, 2002) for studies, modeling, permit applications, and any other work needed to obtain permits to discharge brines from the South Bay Ponds which the United States and the State are acquiring from Cargill, Inc. as part of the concurrent Conveyance Agreement. The Parties acknowledge that prior to May 29, 2002, Cargill had already expended a considerable sum in developing salinity models for discharges and general plans for water control structures that will be integral parts of any permit applications.

Permitting costs will include, but not be limited to, the collection and analysis of water and sediment samples; additional modeling of water quality impacts from the discharge; preparation of environmental documents to comply with the National Environmental Policy Act and the California Environmental Quality Act; as well as preparation and processing of permit applications. Although each of the Parties will separately hire consultants and contractors to complete these tasks, they will jointly discuss the scopes of work and the selection of consultants/contractors.

The cost sharing arrangement is as follows: for the first \$500,000 in expenses incurred after the signing of the Framework Agreement, Cargill will be responsible for 50% and the United States and the State will each be responsible for 25%. For any expenses above \$500,000, Cargill, the United States and the State will each be responsible for 33-1/3%. The Parties will meet at regular intervals to assure the costs are being distributed appropriately.

EXHIBIT H

Estimate of the costs of the Secured Work
on the United States Property and on the State Property



EXHIBIT H

FINANCIAL SECURITY

UNITED STATES PROPERTY (including capital and labor costs)		STATE PROPERTY (including capital and labor costs)	
Unit	Cost	Unit	Cost
Alviso Low Salinity Ponds	\$500,000.00	Baumberg Low Salinity Ponds	\$500,000.00
Alviso High Salinity Ponds	\$6,490,000.00	Napa Ponds	\$5,550,000.00
West Bay Ponds	\$2,960,000.00		
United States Total	\$9,950,000.00	State Total	\$6,050,000.00

SCHEDULE 1
Permits and Authorizations Necessary for Cargill's O&M Obligations

EXECUTION COPY

SCHEDULE 1

PERMITS AND AUTHORIZATIONS FOR CARGILL'S OPERATION AND MANAGEMENT OF THE PROPERTY

1. Department of the Army Permit
Permittee: Cargill Salt Division
Permit Number: 19009S98
Issuing Office: Department of the Army
San Francisco District
333 Market Street
San Francisco, CA 94105-2197
Time Limit for Authorized Work: July 31, 2005

The District Engineer, U.S. Army Corps of Engineers (Corps) issued a Department of the Army permit for certain structures and work occurring in or affecting navigable waters of the United States and the discharge of dredged or fill material into waters of the United States, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344)

Project Purpose: To sustain operation and production of the solar salt facilities in the South San Francisco Bay.

Section 7 Biological Opinion issued by the United States Fish and Wildlife Service on June 9, 1995

The Regional Water Quality Control Board approved a resolution approving water quality certification on May 24, 1995

2. San Francisco Bay Conservation and Development Commission
50 California Street, Suite 2600
San Francisco, California 94111

Amendment No. 3 to Permit 4-93 (Issued on March 14, 1995, as amended through August 29, 2002)

Issuing Authority: McAteer-Petris Act

Purpose: To support maintenance of the salt pond system that provides significant benefits including shorebird habitat and open space.

Permit to remain in effect until February 16, 1995

3. United States Environmental Protection Agency
California Department of Toxic Substances Control

Hazardous Waste Generator Identification Number
Napa Plant Site
EPA I.D. #CAD981576085
DTSC I.D. #HYHQ36014109

Expiration Date: none

4. California State Water Quality Control Board
General Stormwater Permit for Napa Plant Site
WDID 228S002742

Expiration Date: none

5. Regional Water Quality Control Board, San Francisco Bay Region
National Pollutant Discharge Elimination System Permit
Napa Plant Site
CA0028681

Expiration Date: June 16, 1998 – currently operating under an extension

6. Napa County Environmental Health
(Certified Unified Program Agency)
Hazardous Materials Business Plan
Napa Plant Site
No permit number

Expiration Date: none